

SUB-RECIPIENT GRANT AGREEMENT

EDS # _____

This Sub-recipient Grant Agreement (this "Grant Agreement"), entered into by and between **Indiana Family and Social Services Administration (FSSA), Office of Early Childhood and Out-of-School Time** (the "State") and _____ (the "Grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

- 1. Purpose of this Sub-recipient Grant Agreement; Grant Funds.** The purpose of the Sub-recipient Grant Agreement is to award grant funds of \$ XXXX to the Sub-recipient Grantee for eligible costs for performing services or conducting a project (the "Project") concerning Workforce and Professional Development Services for Early Care and Education (ECE) providers to improve the quality of programs. The details of which are described in **Attachments A and B** of this grant agreement, which are attached and hereby incorporated fully into this agreement. The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in conformance with Indiana Code 12-13-7-1(2) and 12-13-5-2(15)(B), establishing the authority to make this Grant, as well as any rules adopted thereunder. Funding for this Agreement is provided by the Child Care Development Block Grant through the United States Department of Health and Human Services, 42 U.S.C. §9858 et seq., as amended by P.L.104-193(2014). The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide services in conformance with the Grant Agreement and for no other purpose.
- 2. Representations and Warranties of the Grantee.**
 - A. The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these Grant funds and that the information set forth in its grant application is true, complete and accurate. The Grantee expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its grant application.
 - B. The Grantee certifies by entering into this Sub-recipient Grant Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Sub-recipient Grant Agreement by any federal or state department or agency. The term "principal" for purposes of this Sub-recipient Grant Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.
- 3. Implementation of and Reporting on the Project.**
 - A. The Grantee shall implement and complete the Project in accordance with **Attachment B** and with the plans and specifications contained in its Grant Application, which is on file with the State and is hereby incorporated by reference. Modification of the Project shall require prior written approval of the State.
 - B. The Grantee shall submit to the State written progress reports until the completion of the Project. These reports shall be submitted on a monthly basis and shall contain such detail of progress or performance on the Project as is requested by the State.
- 4. Term.** This Sub-recipient Grant Agreement commences on October 1, 2015 and shall remain in effect through September 30, 2017. Unless otherwise provided herein, it may be extended or renewed upon

the written agreement of the parties and in conformance with IC 5-22-17-4, and as permitted by the state or federal law governing this Grant.

5. Grant Funding.

- A. The State shall fund this grant in the amount of \$_____. The approved Project Budget is set forth as **Attachment A** of this Grant Agreement, attached hereto and incorporated herein. The Grantee shall not spend more than the amount for each line item in the Project Budget without the prior written consent of the State, nor shall the Project costs funded by this Grant Agreement and those funded by any local and/or private share be changed or modified without the prior written consent of the State.
- B. The disbursement of grant funds to the Grantee shall not be made until all documentary materials required by this Grant Agreement have been received and approved by the State and this Grant Agreement has been fully approved by the State.

6. Payment of Claims.

- A. Unless otherwise authorized by statute and agreed to in this Grant Agreement, all payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Grantee in writing. If advance payment of a portion of the grant funds is permitted by statute, and the State agrees to provide such advance payment, it shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures.
- B. Requests for payment will be processed only upon presentation of a Claim Voucher in the form designated by the State. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.
- C. If partial payment has been established as a payment point, the State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.
- D. Claims shall be submitted to the State within Sixty (60) calendar days following the end of the month in which work on or for the Project was performed. The State has the discretion, and reserves the right, to NOT pay any claims submitted later than Sixty (60) calendar days following the end of the month in which the services were provided. All final claims and reports must be submitted to the State within Sixty (60) calendar days after the expiration or termination of this agreement. Payment for claims submitted after that time may, at the discretion of the State, be denied. Claims may be submitted on a monthly basis only. If Grant funds have been advanced and are unexpended at the time that the final claim is submitted, all such unexpended grant funds must be returned to the State.
- E. Claims must be submitted with accompanying supportive documentation as designated by the State. Incomplete claims submitted or claims submitted without supportive documentation will be returned to the Grantee and not processed for payment. Failure to successfully perform or execute the policies and/or provisions made in this Grant Agreement may result in the denial and/or partial payment of claims submitted for reimbursement.

- F. Grantee needs written approval by State prior to subgranting any portion of this Agreement, including State's approval of the Subgrantee. For any approved subgrant entered into by Grantee pursuant to this agreement, Grantee shall enter into written agreements requiring the subgrantee to comply with the provisions set forth in this Agreement. Grantee shall remain responsible to State for the performance of any subgrantee and Grantee shall be responsible for ensuring the proper expenditure of all funds received from this Agreement by its subgrantees.

7. Project Monitoring by the State.

The State may conduct on-site or off-site monitoring reviews of the Project during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Grantee shall extend its full cooperation and give full access to the Project site and to relevant documentation to the State or its authorized designees for the purpose of determining, among other things:

- A. Whether Project activities are consistent with those set forth in **Attachment B**, the grant application, and the terms and conditions of the Grant Agreement;
- B. The actual expenditure of state, local and/or private funds expended to date on the Project is in conformity with the amounts for each Budget line item as set forth in **Attachment A** and that unpaid costs have been properly accrued;
- C. That Grantee is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

8. Audits and Maintenance of Records.

- A. Grantee shall submit to an audit of funds paid through this Grant Agreement, and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.
- B. If required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Grant Agreement, the Grantee shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Grant Agreement. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Grantee is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Grant Agreement. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Grantee's fiscal year. The Grantee agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Grantee, and not of a parent, member, or subsidiary corporation of the Grantee, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the

Auditor has reviewed this Grant Agreement and that the Grantee is not out of compliance with the financial aspects of this Grant Agreement.

- C. If Grantee expends at least \$500,000.00 from all federal sources, a GAAS audit must be completed and submitted pursuant to Generally Accepted Accounting Principles (GAAP), OMB Circular A-133, and the A-133 Compliance Supplement applicable to the audit period. If Grantee expends less than \$500,000.00, Grantee need not submit its GAAS audit in accordance with GAAP. When a GAAS audit is conducted, all funds that are claimed by Grantee and reimbursed by State or any of the offices or divisions of the Indiana Family and Social Services Administration (IFSSA) must be reported in a schedule of all awards received by Grantee from State and all other offices or divisions of IFSSA, identified by funding source. Each appropriate funding source must be identified and reported for all expenditures incurred relative to each award listed on the schedule required above. The auditor chosen by Grantee to complete the audit must review and prepare a report as required by OMB Circular A-133 and the A-133 Compliance Supplement applicable to the audit period on the internal controls over compliance with federal and state statutes, regulations, and grant requirements.
- D. State and the Indiana State Board of Accounts reserve the right to approve any auditor to be employed by Grantee to conduct the audit specified above. Further, if applicable, Grantee shall require its subgrantees to secure audits in accordance with Subparagraphs V.A. and V.B., and to timely file all reports required by the State Board of Accounts.
- E. Grantee shall maintain those books, records, and documents, including, but not limited to, payroll records, banking records, accounting records, and purchase orders, which are sufficient to document Grantee's financial activities and Grantee's claims for reimbursement under this Agreement. Further, Grantee shall establish, maintain, and provide to State such other statistical reports and program reports as are required by the laws, regulations, and policies of the State of Indiana or the United States Government, including any close-out reports required by State.
- F. Grantee shall maintain all records relative hereto during the effective period of this Agreement and for a period of three (3) years from the date Grantee submits to State its final financial status report pursuant to this Agreement, or one (1) year from the resolution of any outstanding administrative, program or fiscal audit question, or legal action, whichever is later. The retention period for records relating to any equipment authorized to be purchased through this Agreement begins on the date of the disposition, replacement, or transfer of such equipment.
- G. Grantee agrees that State has the right to make recommendations and findings in connection with any program or fiscal audit of Grantee's operations related to this Agreement, and Grantee agrees to comply with any corrective actions specified by State, within the time limits established by State.

9. Compliance with Laws.

- A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.

- B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC 4-2-6, *et seq.*, IC 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under IC 4-2-6, 4-2-7, 35-44.1-1-4, and under other applicable laws.
- C. The Grantee certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Grantee agrees that any payments currently due to the State may be withheld from payments due to the Grantee. Additionally, payments may be withheld, delayed, or denied and/or this Grant suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.
- D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Grantee, the Grantee may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.
- E. The Grantee warrants that the Grantee and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant Agreement and grounds for immediate termination and denial of grant opportunities with the State.
- F. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- G. As required by IC 5-22-3-7:
- 1) The Grantee and any principals of the Grantee certify that:
 - a) The Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC 24-5-12 [Telephone Solicitations]; or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

- b) The Grantee will not violate the terms of IC 24-4.7 for the duration of this Grant Agreement, even if IC 24-4.7 is preempted by federal law.
- 2) The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee, except for de minimis and nonsystematic violations,
 - a) Has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - b) Will not violate the terms of IC 24-4.7 for the duration of this Grant Agreement even if IC 24-4.7 is preempted by federal law.

10. Drug-Free Workplace Certification. This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Contractor's employees within the State of Indiana and cannot be further modified, altered or changed.

As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement is in excess of \$25,000.00, the Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily

participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

11. Employment Eligibility Verification. As required by IC 22-5-1.7, the Grantee hereby swears or affirms under the penalties of perjury that:

- A. The Grantee has enrolled and is participating in the E-Verify program;
- B. The Grantee has provided documentation to the State that it has enrolled and is participating in the E-Verify program;
- C. The Grantee does not knowingly employ an unauthorized alien.
- D. The Grantee shall require its contractors who perform work under this Grant Agreement to certify to Grantee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Grantee shall maintain this certification throughout the duration of the term of a contract with a contractor.
- E. The State may terminate for default if the Grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

12. Funding Cancellation. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

13. Governing Law. This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

14. Information Technology Accessibility Standards. Any information technology related products or services purchased, used or maintained through this Grant must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: <http://www.access-board.gov/508.htm>.

15. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Grantee understands that the State is a recipient of federal funds, and therefore, where applicable, Grantee and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

16. Staffing. Grantee shall not hire new staff funded through this agreement without prior approval. Grantee shall notify State within five (5) business days of the voluntary or involuntary termination of any staff member funded by this agreement. Comprehensive background checks must be completed for all staff members.

17. Office availability. Grantee shall ensure that office(s) are available to stakeholders Monday-Friday, 8:00 am- 4:30 pm, excluding State holidays. Grantee shall have a toll free number available.

18. Equipment.

- A. Grantee shall not dispose of, replace, or transfer any equipment authorized to be purchased with funding obtained through this Agreement without the express written approval of State.
- B. Grantee shall, on an annual basis, compile a schedule of all inventory, capital equipment, and any unusable property in Grantee's possession purchased with federal or state funds through this Agreement. The schedule shall be maintained at Grantee's office(s) and provided to State upon request. The schedule shall include:
 - 1. A brief description of the property;
 - 2. A manufacturer's serial number, model number, federal stock number, national stock number, or other identification number of the property;
 - 3. The source of the property, including the award number;
 - 4. Whether title vests in the Grantee or the federal government;
 - 5. The acquisition date (or date received, if the equipment was furnished by the federal government) and cost of the property;
 - 6.. Information from which one can calculate the percentage of federal participation in the cost of the equipment (not applicable to equipment furnished by the federal government);
 - 7. The location and condition of the property and date the information was reported;
 - 8. Unit acquisition cost; and
 - 9. Any ultimate disposition data including the date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the federal awarding agency for its share.
- C. Grantee shall submit all relevant depreciation schedules applicable to the audit period at the time Grantee submits its independent audit report.
- D. If this Agreement is terminated by either party prior to the Expiration of this Agreement, the State may promptly conduct an on-site monitoring of the Project and complete a Project monitoring report.

19. Notice to Parties. Whenever any notice, statement or other communication is required under this Grant, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to: (Include contact name and/or title, name of agency & address)

- B. Notices to the Grantee shall be sent to: (Include contact name and/or title, name of grantee& address)

20. Order of Precedence. Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal law or other controlling document described in paragraph 20, below; (2) this Grant Agreement, (3) Invitation to Apply for Grant; and (4) the Grant Application.

21. Termination for Breach.

- A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and suspend the Grantee’s participation in State grant programs until such time as all material breaches are cured to the State’s satisfaction.
- B. The expenditure of State or federal funds other than in conformance with the Project or the Budget may be deemed a breach. The Grantee explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant Agreement.

22. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award of the grant, this Sub-recipient Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The Grantee shall be compensated for services authorized by the State in the Termination Notice and properly rendered prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

23. Federal and State Third-Party Contract Provisions. If part of this Grant involves the payment of federal funds, the Grantee and, if applicable, its contractors shall comply with the federal grant/contract provisions attached as **Attachment(s)** _____ and incorporated fully herein.

24. Confidentiality, Security and Privacy of Client Personal Information

- A. Terms used, but otherwise not defined in this Agreement shall have the same meaning as those found in 45 CFR Parts 160, 162, and 164.
- B. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 (sections 1171 through 1179 of the Social Security Act), including any subsequent amendments to such Act.
- C. “HIPAA Rules” mean the rules adopted by and promulgated by the US Department of Health and Human Services (“HHS”) under HIPAA and other relevant federal laws currently in force or subsequently made, such as the Health Information Technology for Economic and Clinical

Health Act ("HITECH"), as enumerated under 45 CFR Parts 160, 162, and 164, including without limitation any and all additional or modified regulations thereof. Subsets of the HIPAA Rules include:

- i. HIPAA Enforcement Rule" as defined in 45 CFR Part 160;
- ii. "HIPAA Security Rule" as defined in 45 CFR Part 164, Subparts A and C;
- iii. HIPAA Breach Rule" as defined in 45 CFR Part 164, Subparts A and D; and
- iv. "HIPAA Privacy Rule" as defined in 45 CFR Part 164, Subparts A

- D. Grantee is deemed a Business Associate to the State, Grantee is hereby authorized by the State to create, receive, maintain, and/or transmit Protected Health Information ("PHI") and other Personally Identifiable Information (meaning personal information as collectively defined in IC 4-1-6-1 and IC 4-1-11-3, "PII") on the State's behalf pursuant to and consistent with the Services performed by Grantee under this Agreement.
- E. Grantee agrees that as a Business Associate to the State it is obligated to comply with the HIPAA Rules, as such Rules apply to Business Associates, throughout the term of this Agreement and thereafter as may be required by federal law and such compliance will be at Grantee's sole expense. Further:
 2. Grantee will not use or further disclose PHI or PII except as expressly permitted by this Agreement or as required by law; provided however, nothing in this Agreement shall be construed to permit Grantee use or disclose PHI in a manner that would violate the provisions of the HIPAA Privacy Rule as such Rule applies to the State with regard to the Services performed by Grantee under this Agreement or otherwise cause the State to be non-compliant with the HIPAA Privacy Rule.
 3. Grantee understands it must fully comply with the HIPAA Security Rule and will employ appropriate and compliant safeguards to reasonably prevent the use or disclosure of PHI and PII other than as permitted by this Agreement or required by the HIPAA Privacy Rule. Such safeguards will be designed, implemented, operated, and managed by Grantee at Grantee's sole expense and following the Grantee's best professional judgment regarding such safeguards. Upon the State's reasonable request, Grantee will review such safeguards with the State. Grantee will implement the following HIPAA requirements for any forms of PHI or PII that the Grantee receives, maintains, or transmits on behalf of the State:
 - a. Administrative safeguards under 45 CFR § 164.308
 - b. Physical safeguards under 45 CFR § 164.310
 - c. Technical safeguards under 45 CFR § 164.312
 - d. Policies and procedures and documentation requirements under 45 CFR § 164.316
 4. Grantee understands that it is subject to the HIPAA Enforcement Rule under which Grantee may be subject to criminal and civil penalties for violations of and non-compliance with the HIPAA Rules
- F. Improper Disclosure, Security Incident, and Breach Notification.
 - 1) Grantee understands that it is subject to the HIPAA Breach Rule.

- 2) For the purposes of this Agreement, the term Breach has the same meaning as defined in the HIPAA Breach Rule. The term "Security Incident" shall mean an action or event that has resulted in the improper use or disclosure of PHI or PII in Grantee's safekeeping (in violation of this Agreement and/or in violation of the HIPAA Privacy Rule), the reasonable possibility or suspected possibility that an improper use or disclosure of PHI or PII may have occurred, or circumstances in which PHI or PII has been exposed to an opportunity for improper use or disclosure.
- 3) If a Security Incident occurs or if Grantee suspects that a Security Incident may have occurred with respect to PHI and/or PII in Grantee's safekeeping:
 - a) Grantee shall notify the State of the Security Incident within one (1) business day of when Grantee discovered the Security Incident; such notification shall be made to the FSSA Privacy Office in a manner reasonably prescribed by the FSSA Privacy Officer and shall include as much detail as the Grantee reasonably may be able to acquire within the one (1) business day.
 - b) For the purposes of such Security Incidents, "discovered" and "discovery" shall mean the first day on which such Security Incident is known to the Grantee or, by exercising reasonable diligence, would have been known to the Grantee. Regardless of whether the Grantee failed to exercise reasonable diligence, improperly delaying the notification of discovery beyond the one day requirement, the Grantee will notify the FSSA Privacy Office within one day of gaining actual knowledge of a breach.
 - c) In collaboration with the FSSA Privacy Office, Grantee shall undertake all commercially reasonable efforts necessary to thoroughly investigate the Security Incident and to provide all results of such investigation to the FSSA Privacy Office, including but not limited to Grantee personnel involved, source and cause of the Security Incident, specific information disclosed, disclosure victims (those whose PHI/PII was disclosed), disclosure recipients, supporting materials, actions taken to mitigate or stop the Security Incident, and similar details.
 - d) Grantee's investigation must be undertaken expeditiously and completed to the extent that a determination of whether a Breach has occurred can be reasonably made, including the identification of the victims or likely victims, within a reasonable timeframe as mutually agreed upon with the FSSA Privacy Office, from the date of discovery of the Security Incident. Grantee shall provide details of its investigation to the FSSA Privacy Office on an ongoing basis until the investigation is complete.
 - e) Grantee and the FSSA Privacy Office will collaborate on the results of Grantee's investigation; the determination as to whether a Breach has occurred rests solely with the FSSA Privacy Office.
 - f) If it is determined by the FSSA Privacy Office that a Breach has occurred:
 - 1) Grantee agrees that it shall be responsible for, including all costs with respect to, fulfilling the State's and/or Grantee's obligations for notice to all of the known and suspected victims of the Breach. Such notice shall comply with the HIPAA Breach Rule notification requirements and/or applicable notification requirements under State law.
 - 2) Grantee further agrees that such notification will be made under its name, unless otherwise specified by the FSSA Privacy Office. Grantee will coordinate its Breach notification efforts with the FSSA Privacy Office; the FSSA Privacy Office will approve Grantee's Breach notification procedures and plans, including the format and content of the notice(s) prior to such notification being made.

- 3) Grantee accepts full responsibility for the Breach and any resulting losses or damages incurred by the State or any victim of the Breach.
 - 4) Grantee will undertake all commercially reasonable efforts necessary to mitigate any deleterious effects of the Breach for the known and suspected victims of the Breach.
 - 5) The State, through the FSSA Privacy Office, will make the appropriate notifications to HHS and/or the applicable State agencies with respect to the Breach, unless the Grantee is directed to do so by the FSSA Privacy Office.
- G. Subgrantees. Grantee agrees that in accordance with the HIPAA Privacy Rule any subcontractors engaged by Grantee (in compliance with this Agreement) that will create, receive, maintain, or transmit State PHI/PII on Grantee's behalf will contractually agree to the same restrictions, conditions, and requirements that apply to Grantee with respect to such PHI/PII.
- H. Access by Individuals to their PHI. Grantee acknowledges that in accordance with the HIPAA Privacy Rule individuals for whom Grantee has direct possession of their PHI on the State's behalf have the right to inspect and amend their PHI, and have the right for an accounting of uses and disclosures of such PHI, except as otherwise provided therein. Grantee shall provide such right of inspection, amendment, and accounting of disclosures to such individuals upon reasonable request by the State (or by such individuals if the State directly refers such individuals to Grantee). In situations in which Grantee does not have direct possession of such PHI, then the State shall be responsible for such inspection, amendment, and accounting of disclosures rights by individuals.
- I. Access to Records. Grantee shall make available to HHS and/or the State, Grantee's internal practices, books, and records relating to the use and disclosure of PHI and PII provided to Grantee by the State or created, received, maintained, or transmitted by Grantee on the State's behalf. Grantee shall promptly inform the State by giving notice to the FSSA Privacy Office of any request by HHS (or its designee) for such internal practices, books, and/or records and shall provide the State with copies of any materials or other information made available to HHS.
- J. Return of Protected Health Information. Upon request by the State or upon termination of this Agreement, Grantee will, at the State's sole option, either return or destroy all copies of any PHI or PII provided to Grantee by the State, including PHI or PII created, received, maintained, or transmitted by Grantee on the State's behalf and Grantee shall warrant in writing that it has returned or destroyed such PHI and/or PII. Further, upon termination of this agreement Grantee will not retain any copies of any such PHI and PII and shall warrant same in writing.
- K. Confidentiality of State Information. The Grantee understands and agrees that data, materials, and information disclosed to the Grantee may contain confidential and protected information. The Grantee covenants that data, material and information gathered, based upon or disclosed to the Grantee for the purpose of this Agreement, will not be disclosed to or discussed with third parties without the prior written consent of the State. The parties acknowledge that the services to be performed by Grantee for the State under this Agreement may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Grantee and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Grantee, Grantee agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Agreement. The Grantee shall report any unauthorized disclosures of Social Security numbers to the FSSA HIPAA Compliance Office within one (1) business day of the date of discovery.

- L. Grantee will indemnify and hold the State harmless from any loss, damage, costs, expense, judgment, sanction or liability, including, but not limited to, attorneys' fees and costs, that the State incurs or is subject to, as a result of a breach of this Section by the Grantee or any subgrantee, agent or person under Grantee's control. In the event a claim is made against the State for any such claim, cause of action, liability, damage, cost or expense, State may, at its sole option: (i) tender the defense to Grantee, who shall provide qualified and competent counsel to represent the State interest at Grantee's expense; or (ii) undertake its own defense, utilizing such professionals as it deems reasonably necessary, holding Grantee responsible for all reasonable costs thereof. In any event, State shall have the sole right to control and approve any settlement or other compromise of any claim brought against it that is covered by this Section.

25. Administration of Funds.

- A. Grantee shall maintain financial and accounting records which identify the specific costs attributable to each service code and component description. Grantee shall maintain approved written cost allocation methodologies which identifies procedures for attributing costs to each service code and service component. More restrictive fiscal accountability may be required of Grantee should State determine that Grantee is financially unstable, has a history of poor accountability, or has a management system which does not meet the standards required.
- B. Grantee shall maintain the funds received from State pursuant to this Agreement in an identifiable bookkeeping account and shall use the funds solely for the purposes set forth in this Agreement, in accordance with the terms of this Agreement and the attachment(s).
- C. Grantee shall, upon written demand by State, be required to repay State all sums paid by State to Grantee for which adequate fiscal and/or service delivery documentation is not in existence for any time period audited. If a review or audit of Grantee results in an audit exception or cost disallowance, State shall have the right to set off such amount against current or future allowable claims, demand cash repayment, or withhold payment of current claims in a like amount pending resolution between the parties of any disputed amount.
- D. Grantee agrees to follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs incurred by Grantee pursuant to this Agreement. Grantee shall manage all funds received through this Agreement in accordance with applicable cost principle identified in Office of Management and Budget Circulars A-87 (Government Entities), A-122 (Nonprofit Organizations), A-21 (Educational Institutions), or 48 C.F.R. Part 31 (For-profit Entities).

26. Fees and Program Income Grantee and its subgrantees and/or subcontractors shall impose no fees upon the recipients of any services provided through this Agreement except as explicitly authorized by State. Any program income earned by Grantee from activities conducted through this Agreement must be maintained and expended by Grantee in the program from which the applicable funding was derived, in accordance with applicable state and federal regulations and policies. Grantee must maintain and provide to State an accounting of all program income earned as a result of and during the term of this Agreement. Interest on grant funds, rebates, credits, discounts and refunds earned by Grantee on funds provided pursuant to this Agreement must be maintained and expended by Grantee in the program from which the applicable funding was derived, in accordance with state and federal regulations and policies. Grantee must maintain and provide to State an accounting of all program income, interest, rebates, credits, discounts, and refunds earned as a result of funds being provided through this Agreement.

27. Modification

- A. The parties agree that due to the uncertainty of state and/or federally allocated funds, the total amount of funding awarded with this agreement may be decreased by State immediately upon written notice to Grantee.
- B. Grantee shall notify State within ten (10) days of any termination of services reimbursable pursuant to this Agreement. In the event of such termination, State may reduce the funding to Grantee set forth on the financial attachment(s) in accordance with the procedures specified in Paragraph C of this section.
- C. State may conduct periodic reviews of the utilization of funds provided by State pursuant to this Agreement. After such a review, State may decide to reduce or redistribute the funding available to Grantee. State shall give ten (10) days notice of its decision to reduce or redistribute the funding, which notice shall include a statement of reasons for such reduction or redistribution. Grantee may, within the ten (10) day notice period, present to State written documentation explaining why such a reduction or redistribution should not become final. State retains the right, after a review of such documentation, either to implement or to modify its proposed actions.

28. Insurance and Bonding

- A. The Grantee shall secure and keep in force during the term of this Agreement, the following insurance coverage, covering the Grantee for any and all claims of any nature which may in any manner arise out of or result from Grantee's performance under this Agreement:
 - 1. Grantee agrees to provide general liability insurance coverage relative hereto in the minimum amount of \$500,000 for bodily injury and property damage. Grantee shall also secure insurance in amounts sufficient to reimburse Grantee for damage to any property purchased with state or federal funds. State may at its discretion require Grantee to furnish additional or different insurance coverage. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.
 - 2. The Grantee shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Agreement.
 - 3. Grantee shall provide a bond or insurance coverage to all persons who will be handling funds or property received or disbursed as a result of this Agreement, or who may carry out the duties specified in this Agreement, in an amount equal to ten percent (10%) of the total annual funding provided to Grantee through State to be effective for the period of this Agreement plus three (3) years for purposes of discovery. Grantee's coverage must provide protection against losses resulting from criminal acts and wrongful and negligent performance of the duties specified herein and must specify the State of Indiana as an obligee or additional insured. Grantee shall immediately notify State if said bond or insurance is cancelled or modified in amount. In the event of cancellation, State shall make no further disbursements until certification is provided by a bonding or insurance company that the provisions set forth in this section have been satisfied. In the event such verification is not received by State within ten (10) days of the notice of cancellation, Grantee agrees to return to State the balance of all monies paid to Grantee by State under this Agreement. State may at its discretion require Grantee to furnish additional or different bond or insurance coverage.
- B. The Grantee's insurance coverage must meet the following additional requirements:
 - 1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Grantee.
 3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Grantee in excess of the minimum requirements set forth above. The duty to indemnify the State under this Agreement shall not be limited by the insurance required in this Agreement.
 4. The insurance required in this Agreement, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
- C. Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling the State to immediately terminate this Agreement. The Grantee shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Agreement.

29. Religious and Political Activities.

- A. State and Grantee agree that services provided with funding obtained through this Agreement shall be non-sectarian in nature and that religious activities shall not be included in any activities to be conducted hereunder.
- B. Grantee certifies that the funding provided by State through this Agreement shall not be used to further any type of political or voter activity. Grantee further agrees to comply with applicable provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

30. Indemnification. Grantee shall indemnify, defend and hold harmless State and the State of Indiana, and their employees, agents and officials, against any and all actions, liabilities, losses, damages, costs or expenses which they may sustain, incur or be required to pay by reason of any person suffering bodily injury, death or property loss or damage as a result of any act or omission of Grantee, or any officer, agent, employee or subgrantee and/or subcontractor thereof, in carrying out activities under this Agreement. Grantee shall require any subgrantee and/or subcontractor to indemnify Grantee, State, and the State of Indiana, and their employees, agents, and officials, as part of any subgrant or subcontract issued pursuant to this Agreement.

31. Lobbying Activities.

- A. Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, Grantee hereby assures and certifies, to the best of his or her knowledge and belief, that no federally appropriated funds have been paid, or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

member of Congress, an officer or employee of Congress, or any employee or a member of Congress in connection with this Agreement, Grantee shall complete and submit "Standard Form-LLL," "Disclosure From to Report Lobbying." If Grantee is required to submit "Standard Form-LLL," the form and instructions for preparation of the form may be obtained from State.

- C. Grantee shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- D. The foregoing certification is a material representation of fact upon which reliance was or will be placed when entering into this Agreement and any transactions with State. Submission of this certification is a prerequisite for making or entering into any transaction as imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

32. Environmental Tobacco Smoke. Grantee certifies that it will comply with applicable provisions of the Pro-Children Act of 1994 (20 U.S.C. § 6081 *et seq.*), which requires that smoking not be permitted in any portion of any indoor facility which is used routinely or regularly for the provision of health, day care, education, or library services to children under the age of eighteen (18) years if the services are funded by federal programs either directly or through states or local governments by federal grant, contract, loan, or loan guarantee.

33. Renewal. This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed Agreement may not be longer than the term of the original Agreement.

34. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate clauses (as defined in the 2014 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

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SAMPLE

SIGNATURE PAGE

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Grant other than that which appears upon the face hereof.

In Witness Whereof, Grantee and the State have, through their duly authorized representatives, entered into this Grant. The parties, having read and understood the foregoing terms of this Grant, do by their respective signatures dated below agree to the terms thereof.

[Grantee]

Family and Social Services Administration
Office of Early Childhood and Out-of-School Learning

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
Melanie Brizzi
Date: _____

Approved by:
Indiana Department of Administration

Approved by:
State Budget Agency

By: _____ (for)
Jessica Robertson, Commissioner
Date: _____

By: _____ (for)
Brian E. Bailey, Director
Date: _____

Approved as to Form and Legality:
Office of the Attorney General

By: _____ (for)
Gregory F. Zoeller, Attorney General
Date: _____